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Kelley v. Yadon Appellant's Brief Dckt. 36705

IN THE SUPREME COURT OF THE STATE OF IDAHO

GEORGE KELLEY and JOANN KELLEY, husband and wife,

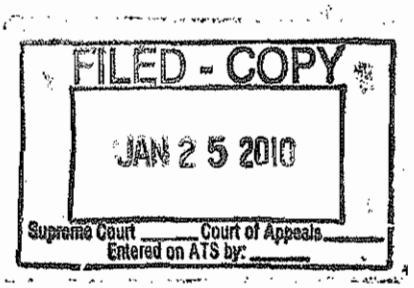
Plaintiffs/Respondents,

vs.

WARREN YADON and KIM YADON,

Defendants/Appellant.

Supreme Court No. 36705-2009



APPELLANT WARREN YADON'S BRIEF

Appeal from the District Court of the Fifth Judicial District of the State of Idaho, in and for Cassia County, Honorable Michael R. Crabtree, District Judge, presiding.

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III. STATEMENT OF THE CASE

A. Nature of the Case

Appellant Warren Yadon, (hereinafter "Warren Yadon") and Respondent Kim Yadon were husband and wife at the time of this transaction. Together they purchased a piece of property known as "the Montgomery farm" in 1994, and held legal title to the property by warranty deed as husband and wife. Warren Yadon filed for divorce from Kim Yadon in the spring of 2008, and the divorce was finalized on December 18, 2008. In August of 2008, Kim Yadon's parents George and JoAnn Kelley (hereinafter "the Kelleys") filed a lawsuit against Warren and Kim Yadon claiming an ownership interest in the Montgomery farm by constructive or resulting trust.

B. Course of Proceedings

The Kelleys filed a Complaint against Warren and Kim Yadon on August 25, 2008. R. Vol. 1, pg. 22. At the time, Warren Yadon had just filed for divorce from Kim Yadon. Warren Yadon filed an Answer and Counter Petition for eviction on September 8, 2008. R. Vol. 1, pg. 36. Warren Yadon filed a motion for summary judgment on December 29, 2008, requesting that the trial court find that there was no genuine issue of fact on Kelleys' theories of constructive trust

and resulting trust. R. Vol. 1., pg. 125. The Kelleys filed a memorandum in opposition to summary judgment on January 15, 2009. R. Vol. 1., pg. 212. The Kelleys did not file an affidavit in opposition to summary judgment, and instead stipulated to rely upon deposition excerpts quoted in their memorandum in opposition. Tr. Vol. 1, pg. 14, ll. 10-25, pg. 15, ll. 1-3. The trial court called up Warren Yadon's motion for summary judgment for hearing on February 5, 2009, accepted oral argument on the motion for summary judgment and took the matter under advisement. R. Vol. 2, pg. 244. On February 12, 2009, the trial court issued its Memorandum Decision Denying Warren Yadon's Motion for Summary Judgment. R. Vol. 2, 245.

This matter then came up for bench trial on March 30, 2009. Tr. Vol. 1, pg. 55, ll. 1-5. The trial court issued its Findings of Fact and Conclusions of Law on June 4, 2009, denying the Kelleys' claim under constructive trust but imposing a resulting trust in favor of the Kelleys. R. Vol. 2, pg. 391. Warren Yadon filed his notice of appeal to this Court on July 13, 2009. R. Vol. 2, pg. 447.

C. Statement of Facts

In 1990, plaintiff George Kelley testified that he negotiated with Esther Montgomery regarding the possibility of purchasing her farm, which is commonly known as the "Montgomery Farm." R. Vol. 2, pg. 392; Tr. Vol. 1, pg. 82, ll. 12-15. George Kelley testified that Esther Montgomery wanted cash for the farm, and that he didn't have the money so he went to Ray Commons for help. Ray Commons agreed to purchase the Montgomery Farm, in his name, and give George Kelley an option to purchase. Tr. Vol. 1, pg. 83, ll. 8-15. George Kelley testified that he entered into a Farm Lease with Option to Purchase with Commons Farms. Tr. Vol. 1, pg. 84, ll. 15-25.

George Kelley testified that in 1992, when the option to purchase was about to expire, he believed that he would not be able to get financing to exercise the option to purchase on the Montgomery Farm due to credit problems, Chapter 11 bankruptcy, and IRS tax liens. Tr. Vol. 1, pg. 127, ll. 2-5. George Kelley testified that in 1992, he transferred his option to purchase the Montgomery farm to Warren and Kim Yadon. Tr. Vol 1, pg. 128, ll. 1-6. On the 4th day of March, 1992, the Kelleys entered into an "Agreement Transferring Option to Purchase Rights" to the Yadons. Tr. Vol. 1, pg. 85, 19-25. As consideration for the option

to purchase, George Kelley testified that Warren and Kim Yadon assumed a $40,000.00 debt that Kelley owed to Doc Flanders. Tr. Vol. 1, pg. 129, ll. 4-5.

Also on March 4, 1992, Warren and Kim Yadon entered into an agreement with Doc Flanders called a "Tenants-In-Common Agreement." R. Plaintiff's Exhibit "9". Under this agreement, the Yadons assigned their newly acquired "option to purchase" the Montgomery Farm to Doc Flanders so that Doc Flanders could purchase the property from Commons Farm, Inc. *Id.* Doc Flanders assumed the $117,000.00 loan taken out by Commons Farm, Inc. on the Montgomery Farm from Farm Credit Services. *Id.*

As security, Doc Flanders retained a one-half interest in the Montgomery Farm and transferred the other one-half interest to the Yadons. R. Plaintiff's Exhibit "7". The Yadon's agreed that they would repay Doc Flanders the $117,000.00 plus nine (9%) interest as well as the $40,000.00 obligation described earlier, at which time Doc Flanders would give the Yadons the deed to his one-half interest in the Montgomery Farm. R. Plaintiff's Exhibit "9". Consequently, on March 4, 1992, the Yadons took a loan in their names and used the proceeds to buy a one-half interest in the property from Flanders, who gave them a quitclaim deed in exchange." R. Vol. 2, pg. 393.

In addition, a term of the "Tenants–In–Common Agreement" was that "the purpose of the land ownership is to generate income by leasing the same for farming operations and/or participating in agricultural CRP and set aside programs to the extent it is appropriate to do so." R. Plaintiff's Exhibit "9". George Kelley testified that he knew in 1992, that he had entered into a written lease agreement with Doc Flanders, and that he knew Warren and Kim Yadon were one-half owners of the Montgomery farm with Doc Flanders. Tr. Vol. 1, pg. 7-13; R. Plaintiff's Exhibits "3" and "4"; Tr. Vol. 1, pg. 139, ll. 5-11.

On July 20, 1994, the Yadons took another loan and purchased Flanders' share in the farm, thereby becoming the sole title holders to the farm." R. Vol. 2, pg. 395; R. Plaintiff's Exhibit "10". Paul and Bethany Haynes issued a quitclaim deed for the Montgomery Farm to the Yadons, to clear title for the Northwest Farm Credit loan. R. Plaintiff's Exhibit "11". As a consequence, on August 4, 1994, Doc Flanders issued a warranty deed to the Yadons transferring the remaining one-half interest in the Montgomery Farm to the Yadons. R. Plaintiffs Exhibit "12". Since that time, the trial court found that the Yadons have held sole legal title to the Montgomery Farm. R. Vol. 2, pg. 393.

On April 20, 2000, the Yadons again refinanced the Montgomery Farm, with D.L. Evans Bank, for $396,000.00, and granted a mortgage to D.L. Evans

Bank. R. Plaintiff's Exhibit "16". Since that time, the Yadons have been the sole legal title holders to the Montgomery farm.

According to George Kelley, there was a meeting that took place at his attorney's office (Mr. Bill Parsons) in Burley, wherein, the conveyance to the Yadons was discussed. Tr. Vol. 1, pg. 153, ll. 14-25, pg. 154, ll. 1-18. George Kelley testified that Warren and Kim Yadon were present, along with Mr. Parsons and George Kelley, and that the parties discussed the purchase of the Montgomery farm. Id. George Kelley testified that at some point Warren Yadon left the room and Bill Parsons asked him, "are you okay with this, Kelley?" Id. George Kelley responded that he was okay with the situation. Id.

George Kelley knew that the status in 1994, was that the Yadons were the two legal owners of the Montgomery Farm, and that George Kelley was going to pay the mortgage payments in exchange for continuing to operate the farm. Tr. Vol. 1, pg. 158, ll. 5-12.

Since that time, the Kelleys have continued to operate the farm, and keep the profit off the farm. Tr. Vol. 1, pg. 157, ll. 2-7 and 24-25; pg. 15, ll. 1-2. However, even George Kelley testified that there were times when he did not make the loan payment, and the Yadons had to cover that for him. Tr. Vol. 1, pg. 158, ll. 21-25. George Kelley admitted that it could have happened more than

once, and that he doesn't have any idea how many times. Tr. Vol. 1, pg. 160, ll. 24-25; pg. 161, ll. 1-4. Further, George Kelley testified that he repaid the Yadons for all of the payments he missed, but that it could have taken a few months to get around to it after he "sold some hay or something later on." Tr. Vol. 1, pg. 161, ll. 16-24. The trial court found that indeed George Kelley was occasionally late making payments causing the Yadons to have to make a timely payment on their credit cards or through check protection. R. Vol. 2, pg. 397.

Warren Yadon testified that the Kelleys did not contribute any money to the purchase price for the Montgomery farm. Tr. Vol. 1, pg. 303, ll. 10-14; pg. 307, ll. 19-25. The trial court found that in 2004 or 2005 Kim Yadon told her father that he needed to get the farm out of the Yadons' name, indicating that the Yadons' marriage was troubled. R. Vol. 2, pg. 397. The trial court found that Warren Yadon filed for divorce in May, 2008, and that the instant lawsuit was filed by the Kelleys in August, 2008. *Id.*

After the lawsuit was filed, Warren Yadon served the Kelleys with a notice of eviction on September 8, 2008. R. Vol. 2, pg. 397.

IV. STANDARD OF REVIEW

"On appeal from the grant of a motion for summary judgment, this Court's standard of review is the same as the standard used by the district court originally

ruling on the motion." *Chapin v. Linden*, 144 Idaho 393, 162 P.3d 772, 774 (2007). Summary judgment is proper "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Idaho R. Civ. P. 56(c).

However, "a mere scintilla of evidence or slight doubt as to the facts" is not sufficient to create a genuine issue for purposes of summary judgment. *Harpole v. State*, 131 Idaho 437, 439, 958 P.2d 594, 596 (1998), *Petricevich v. Salmon River Canal Co.*, 92 Idaho 865, 871, 452 P.2d 362 (1969). The non-moving party "must respond to the summary judgment motion with specific facts showing there is a genuine issue for trial." *Tuttle v. Sudenga Industries, Inc.*, 125 Idaho 145, 150, 868 P.2d 473, 478 (1994). It is well established that merely asserting the existence of a factual dispute will not defeat a motion for summary judgment. There must be a "genuine issue" and it must exist as to a "material fact." *See Garzee v. Barkley*, 121 Idaho, 771, 774, 828 P.2d 334, 337 (Ct. App. 1992).

A district court's findings of fact will not be set aside unless they are clearly erroneous, although the appellate court exercises free review over conclusions of law. *Carney v. Heinson*, 133 Idaho 275, 985 P.2d 1137 (1999). "Clear error" will not be deemed to exist if the court's findings are supported by substantial and

competent, though conflicting, evidence. *Muniz v. Schrader*, 115 Idaho 497, 767 P.2d 1272 (Ct.App.1989). The Supreme Court may substitute its view for that of the district court on a legal issue. *Marshall v. Blair*, 130 Idaho 675, 946 P.2d 975 (1997).

V. ISSUES ON APPEAL

1. Did the trial court err in denying Warren Yadon's motion for summary judgment on the theory of resulting trust, when the Kelleys failed to establish a genuine issue of fact on the element of payment of the purchase price?
2. Did the trial court misapply the law with regard to the elements of resulting trust, specifically, whether the Kelleys paid the purchase price or incurred an absolute obligation to pay the purchase price?
3. Did the trial court err in finding that the Kelleys' had established the elements of resulting trust by clear and convincing evidence at trial?
4. Did the trial court err in its application of the burden of proof at trial?
5. Did the trial court err in not granting Warren Yadon's claim for eviction?
6. Did the trial court err in awarding attorney fees to the Kelleys?

VI. ARGUMENT

With regard to the Kelleys' claim of resulting trust, the trial court erred in two regards in the underlying proceedings in this matter. First, the trial court incorrectly applied the law and standard of review at the summary judgment stage of proceedings resulting in denial of Warren Yadon's motion for summary judgment. Second, the trial court incorrectly applied the law and burdens of proof at trial resulting in the clearly erroneous finding that the Kelleys had established the elements of a resulting trust. This Court should overturn the trial court's decisions, and enter summary judgment in favor of Warren Yadon, or in the alternative, enter an order quieting title to the Montgomery farm in the names of Warren and Kim Yadon.

A. THE TRIAL COURT SHOULD HAVE FOUND THAT THE KELLEYS FAILED TO ESTABLISH A GENUINE ISSUE OF FACT ON THEIR CLAIM OF RESULTING TRUST AT THE SUMMARY JUDGMENT STAGE OF PROCEEDINGS.

In response to Warren Yadon's motion for summary judgment, the Kelleys had the burden to come forward with facts sufficient to create a genuine issue of fact on their claim of resulting trust. The Kelleys failed to establish any facts to create an issue of fact as to whether they had paid the purchase price or incurred an absolute obligation to pay for the Montgomery farm. The trial court

erroneously denied Warren Yadon's motion for summary judgment, and Mr. Yadon now requests that this Court enter summary judgment in favor of the Yadons. "On appeal from the grant of a motion for summary judgment, this Court's standard of review is the same as the standard used by the district court originally ruling on the motion." *Chapin v. Linden*, 144 Idaho 393, 162 P.3d 772, 774 (2007).

In support of his motion for summary judgment, Warren Yadon established facts by affidavit that Warren and Kim Yadon owned the Montgomery farm in fee simple, and had paid the purchase price for the Montgomery farm as contained in the recitals of the deeds to the property. R. Vol. 1, pgs. 149, 166 & 168. These facts, as contained in the affidavit of Warren Yadon, were sufficient to invoke the presumption under Idaho Law that the holder of legal title is the owner thereof. The burden of proof then shifted to the Kelleys to create a genuine issue of fact on each element of their claim of resulting trust, in order to rebut the presumption of ownership by the Yadons.

A resulting trust can arise either (1) where title to property is transferred to one party, the trustee, although another party, the beneficiary of the trust, paid the purchase price for that property; or (2) where "legal title to property is transferred by gift or devise, with an apparent intent that the donee or devisee is to hold legal

title as a trustee in order for the beneficiary of the trust to enjoy the beneficial interest in that property." *Hettinga v. Sybrandy*, 126 Idaho 468, 469, 886 P.2d 772, 775 (1994); *citing Russ Ballard & Family Achievement Inst. v. Lava Hot Springs Resort, Inc.*, 97 Idaho 572, 579, 548 P.2d 72, 79 (1976); *see also Hawe v. Hawe*, 89 Idaho 367, 376, 406 P.2d 106, 110 (1965). It has been said of a resulting trust that:

> it never arises out of a contract or agreement that is legally enforceable, but arises by implication of law from their acts and conduct apart from any contract, the law implying a trust where the acts of the party to be charged as trustee have been such as are in honesty and fair dealing consistent only with a purpose to hold the property in trust, notwithstanding such party may never have agreed to the trust and may have really intended to resist it.

Shepherd v. Dougan, 58 Idaho 543, 553, 76 P.2d 442, 445 (1937). In addition, "as a general rule, a resulting trust arises only where such may reasonably be presumed to be the intention of the parties as determined from the facts and circumstances existing at the time of the transaction." *Hawe*, 89 Idaho at 109, 406 P.2d at 374 (emphasis supplied); *citing Shurrum v. Watts*, 80 Idaho 44, 50, 324 P.2d 380, 385 (1958).

This Court should take particular note of the striking similarity of the facts and legal claims in *Hettinga v. Sybrandy*. In 1982, the Hettingas moved to Idaho from California, and hoped to purchase the DeHood Dairy, in Jerome County, but

were unable to arrange financing for the purchase. *Hettinga*, 126 Idaho at 468, 886 P.2d at 773. Mrs. Hettinga's parents (the Sybrandys) verbally agreed to purchase the dairy and lease the property to the Hettingas for a monthly payment equal to the payment due on the underlying land sale contract. *Id.* The Sybrandys purchased the property in their names. *Id.* At one point, the dairy was expanded by purchasing additional land, and that was accomplished by a loan in the name of the Sybrandys and title was vested in the Sybrandys. *Id.* The additional monthly payments were reimbursed by the Hettingas. *Id.* All of the personal property and livestock associated with the dairy operation was purchased by the Hettingas. *Id.* In 1991, Mrs. Hettinga filed for divorce from Mr. Hettinga, and Mr. Hettinga filed a complaint in district court against Mrs. Hettinga and the Sybrandys seeking a determination of the Hettingas' and the Sybrandys' interests in the dairy. *Hettinga*, 126 Idaho at 469, 886 P.2d at 774. Mr. Hettinga's claims were that the relationship between the Hettingas and the Sybrandys created either a "resulting trust" or a "constructive trust", and that the Hettingas should be deemed to be the owners of the property despite the lack of a written conveyance of the property to them. *Id.*

On appellate review, this Court must consider the facts as they existed at the time of the "transaction." *See, Shurrum*, 80 Idaho at 50, 324 P.2d at 385. The

"transaction" was a conveyance of the Montgomery Farm from Doc Flanders to the Yadons in two separate conveyances – the first in 1992 and the second in 1994. R. Vol. 1, pgs. 166 & 168.

This Court should overturn the trial court's denial of summary judgment because the Kelleys did not establish a genuine issue of fact as to an element of their claim – that they paid the purchase price for the Montgomery Farm. In order to establish a genuine issue of material fact that a "resulting trust" arose at the time of the transfer, plaintiffs had to set forth facts to create an issue of fact that they "paid the purchase price" for the Montgomery Farm. *Hettinga*, 126 Idaho at 470, 886 P.2d at 775. The "purchase price"refers to the monies or consideration that was delivered to Flanders in exchange for the Montgomery Farm. In *Hettinga*, the Court found that the person seeking to establish a resulting trust must either demonstrate that they paid the purchase price or "incurred an absolute obligation to pay for the property." *Id.*

In his brief and affidavits, Warren Yadon established the chain of title which reveals that Commons Farm, Inc., owned the Montgomery Farm and conveyed it to Doc Flanders. The consideration paid to Commons Farms, Inc., by Flanders, was the assumption of the Farm Credit Services loan of $117,000.00. R. Vol. 1, pg. 157. At that time, the Yadons transferred their option to purchase

to Doc Flanders, who came up with the financing to purchase the Montgomery Farm, and in return, deeded an undivided one-half interest in the farm back to the Yadons. R. Vol. 1, pg. 166. Two years later, the Yadons purchased Doc Flanders' remaining one-half interest in the Montgomery Farm with proceeds from a loan from Northwest Farm Credit Services. R. Vol. 1, pgs. 172 & 203. The Yadons obtained the loan in their names, delivered the consideration to Flanders, and in the process "incurred an absolute obligation" to make the loan payments and gave a mortgage to Northwest Farm Credit. R. Vol. 1, pg. 172. In so doing, the Yadons paid the "purchase price for the property"or "incurred an absolute obligation" to pay the purchase price. *Hettinga*, 126 Idaho at 470, 886 P.2d at 775.

In response to the motion for summary judgment, the Kelleys failed to establish facts sufficient to create a genuine issue of fact on a necessary element of their claim of resulting trust – i.e. that they "paid the purchase price" for the Montgomery Farm. In their memorandum plaintiffs argue generically, "if the court believes the evidence offered by the Plaintiffs then the court can come to one result and on the other hand if the court believes the evidence of Yadons it can come to a different result." R. Vol. 1, pg. 219. This is true, if and only if, both parties have established by affidavit conflicting evidence that creates a genuine

issue of fact. What evidence did the Kelleys provide on the issue of who paid the purchase price? The Kelleys cited portions of the deposition transcript of George Kelley wherein Mr. Kelley's attorney asked him:

> Q. And part of the deal was that, you know, they got the loan in their names and it was deeded to them, but you were going to make the payments, right?
> A. That's right.
> Q. And did you actually make the payments?
> A. Yes.

R. Vol. 1, pg. 216. This evidence did not create an issue of fact, but only corroborated Warren Yadon's position that it was the Yadons who paid the purchase price with proceeds from a loan in their names. Regardless of who made the loan payments after the transaction was completed, the purchase price had been paid when the loan proceeds were delivered to Mr. Flanders. Therefore, this piece of evidence failed to create an issue of fact for trial.

Plaintiffs also supplied the Court with testimony from Warren Yadon in opposition to summary judgment:

> Q. Okay. And you paid Flanders?
> A. Yes.
> Q. With your money?
> A. With money that we borrowed.
> Q. From who?
> A. The bank.
> . . . .
> Q. And so it was out of that money that you paid Flanders?

A. Yes.

R. Vol. 1, pg. 215. This testimony further corroborated and supported Warren Yadon's position, that the Yadons paid the purchase price for the Montgomery Farm with proceeds from a loan in their names. Again, this evidence did not create an issue of fact as to whether or not the Kelleys paid the purchase price.

Plaintiffs also made the argument that "Kelley had the relationships with Flanders and Commons for which Kelleys then allowed those persons to deal with Yadons." R. Vol. 1, pg. 220. This allegation is not supported by any fact in the record. Even if it were, this alleged fact does not create an issue of fact as to any element required. Plaintiffs then go on to argue that "Yadon comes in and says 'Oh, this is my property because there was a Lease.'" R. Vol. 1, pg. 220. First, this alleged quote from Warren Yadon, though it has been presented as a direct quote, did not appear in any portion of the deposition transcript of Warren Yadon on record with the trial court. It is a misrepresentation of Mr. Yadon's testimony, which is that he "acquired the farm" and then leased it to Mr. Kelley under a verbal agreement. R. Vol. 1, pg. 151. Second, this argument did not create a genuine issue of fact as to whether the Kelleys paid the purchase price.

The Kelleys then argued that *Hettinga* does not support Warren Yadon's position, but instead, supports the Kelleys' position because "Kelley paid all of

the payments and taxes." R. Vol. 1, pg. 222. Plaintiffs kept coming back to the same argument – that they paid the purchase price because they allegedly made the loan payments. However, there were no facts in the record to establish that the Kelleys paid the purchase price at the time of the transaction.

Even assuming the facts in a light most favorable to plaintiffs and giving them the benefit of the doubt that it was their money that was used to pay the loan obligation, the contention that they paid the purchase price is simply untenable. It is axiomatic in the lending industry that a person who takes a loan is actually purchasing money from the lender, in exchange for an obligation to repay the loan with interest. This Court has long held that a "purchase price" for real property can be paid from "the proceeds of a loan." *Lepel v. Lepel*, 93 Idaho 82, 86, 456 P.2d 249, 253 (1969). The proper legal standard for the trial court to apply is that the purchase price was paid from the loan proceeds secured by the Yadons in 1994. The reimbursement of loan payments by the Kelleys later on resulted from a separate agreement related to the lease of the farm, and did not constitute payment of the purchase price.

Because the trier of fact in this matter was the trial court, the judge did not have to draw all inferences in favor of the non-moving party, the judge was allowed to consider the evidence presented and draw reasonable inferences as he

saw fit based upon the evidence. *See, Verbillis v. Dependable Appliance Company*, 107 Idaho 335, 338, 689 P.2d 227, 230 (Ct. App. 1984). "The appliance store, in essence, has urged us to hypothecate a fact . . .. This we cannot do. Motions for summary judgment are decided upon the facts shown." *Id.* The only reasonable inference of fact in this matter was that Warren and Kim Yadon purchased the Montgomery Farm with proceeds from a loan obtained in their name, for which they had the absolute obligation to repay. There was no evidence provided by the Kelleys that the loan was not in the names of the Yadons. There was no evidence presented by the Kelleys that they somehow "incurred an absolute obligation" to pay the purchase price. The trial court erred in finding that there was a genuine issue of fact as to whom had paid the purchase price. Further, Warren Yadon requests that this Court make a legal determination that the Kelleys did not incur an "absolute obligation" to pay the purchase price be making a verbal agreement to pay the Yadons' loan payments.

This Court should overrule the trial court's denial of summary judgment, and grant Warren Yadon's motion for summary judgment and quiet title to the Montgomery farm in the names of Warren and Kim Yadon.

B. THE TRIAL COURT MISAPPLIED THE LAW AND ITS FINDINGS WERE CLEARLY ERRONEOUS WITH REGARD TO THE IMPOSITION OF A RESULTING TRUST.

The trial court misapplied the law of resulting trusts regarding the element of payment of the purchase price, and in addition, its findings of fact were clearly erroneous when it found that the Kelleys had actually reimbursed all of the loan payments made by the Yadons.

1. The trial court improperly found that the Kelleys' act of reimbursing the loan payments constituted "payment of the purchase price" under the theory of resulting trust.

In general the trial court held that "Idaho law presumes that the holder of title to real property is the legal owner of that property." *Hettinga v. Sybrandy*, 126 Idaho 467, 469, 886 P.2d 772, 774 (1994); *citing Russ Ballard & Family Achievement Inst. v. Lava Hot Springs Resort, Inc.*, 97 Idaho 572, 579, 548 P.2d 72, 79 (1976). The Idaho statute of frauds requires that "all interests in real property must be accomplished through a writing, signed by the party granting the interest or that party's agent." Idaho Code § 9-503. The trial court also correctly identified that " it is a rebuttable presumption that the holder of title to property is the legal owner of that property." *See, Hettinga*, 126 Idaho at 469, 886 P.2d at 774. And that "the burden is on the party who opposes the presumption to produce evidence to rebut the presumption." See, IRE 301. The trial court also

held that "all interests in real property must be accomplished through a writing, signed by the party granting the interest or that party's agent." Idaho Code § 9-503. Further, the trial court properly distinguished that "although a trust in real property can arise by implication or operation of law without such a writing, I.C. § 9-504, a person claiming ownership through such a trust must establish such claim by evidence that is clear, satisfactory and convincing." *See, Hettinga*, 126 Idaho at 469, 886 P.2d at 774.

The legal argument relied upon by the Kelleys at trial – and ultimately adopted by the trial court – was that the Kelleys paid the purchase price for the Montgomery farm when they either directly paid or reimbursed the Yadons for all of the semi-annual loan payments due to Northwest Farm Credit (and subsequent lenders). R. Vol. 2, pg. 402. This conclusion is a (1) misapplication of law coupled with a (2) clearly erroneous finding of fact.

First, the trial court misapplied the law when it made a legal determination that the Kelleys' reimbursement/payment of the semi-annual loan payments rose to the level of "paying the purchase price."

The case of *Hettinga v. Sybrandy* is of paramount importance to this case to determine what constitutes payment of the purchase price. In general, the purchase price is paid when consideration is supplied in exchange for property.

Hettinga, 126 Idaho at 470, 886. P.2d at 775; *citing Shurrum v. Watts*, 80 Idaho 44, 54, 324 P.2d 380, 386 (1958). In this matter, the trial court found that in 1992 "the Yadons took a loan in their names and used the proceeds to buy a one-half interest in the property from Flanders, who gave them a quitclaim deed in exchange." R. Vol.2, pg. 3. Curiously, in the next sentence, the trial court stated "the Yadons did not use any of their own money in this transaction." *Id.* This is an obvious contradiction, because a person who incurs a loan by written obligation "owns" the money that is given to them by the bank. Therefore, the Yadons did use their own money, money that they had borrowed/purchased from the bank. This is a critical misapplication of law by the trial court.

The trial court then found that in 1994, "the Yadons took another loan and purchased Flanders' share in the farm, thereby becoming the sole title holders to the farm." R. Vol. 2, pg. 5. The Court's acknowledgment of these facts should have ended the analysis of which party paid the purchase price, because at that time the purchase price had been delivered to Flanders by the Yadons in the form of money that the Yadons purchased from the bank. It is axiomatic in the lending industry that a person who takes a loan is actually purchasing money from the lender, in exchange for an obligation to repay the loan with interest. This Court

has long held that a "purchase price" for real property can be paid from "the proceeds of a loan." *Lepel v. Lepel*, 93 Idaho 82, 86, 456 P.2d 249, 253 (1969)

However, the trial court went on to find that the Kelleys agreed to an absolute obligation "to pay the Yadon's loans for the farm". R. Vol. 2, pg. 402. The trial court said that the existence of this "absolute obligation," which was not in writing, was credible and corroborated by Kim Yadon's testimony. R. Vol. 2, pg. 402. The trial court did not indicate which part of Kim Yadon's testimony provided the "corroboration" for that obligation. The trial court went on to say that evidence established that the Kelleys have performed the agreement. R. Vol. 2, pg. 402.

As to the issue of which party incurred an "absolute obligation" to pay the loan, the Yadons were the only parties who incurred a written obligation to re-pay the loan. The Yadons signed a promissory note to repay the loan and gave a mortgage to Northwest Farm Credit. Signing a promissory note and giving a mortgage is much more indicative of "incurring an absolute obligation" to re-pay the loan, than verbally agreeing to reimburse loan payments. The Kelleys did nothing to bind themselves in writing to make payments on the loan to either the bank or the Yadons. The Yadons were the ONLY parties obligated on that loan. If for any reason the loan were to have fallen into default, the Yadons were the

ONLY parties on the hook for collection of that debt. Further, the trial court found that George Kelley "occasionally was late with a payment," and left the Yadons responsible to come up with the money out of their own pockets. R. Vol. 2, pg. 397. Warren Yadon is requesting that this Court find, as a matter of law, that verbally agreeing to reimburse a loan payment does NOT constitute "payment of the purchase price" or "incurring an absolute obligation" to pay the purchase price.

The trial court held that "the mixing in and use of Kelley's personal assets as collateral for the loans taken by the Yadon's is strong evidence in support of the existence of the "obligation" to repay the loan." R. Vol. 2, pg. 401. However, the trial court did not cite to any exhibit or piece of testimony to support the claim that Kelley's personal assets were used as collateral on the loan. The trial court did indicate that in 2000, the "Yadons refinanced their loan with D.L. Evans Bank, which included the use of George Kelley's personal property farm and irrigation equipment located on the Montgomery farm as collateral security for the loan." R. Vol. 2, pg. 5. However, this finding was inaccurate. A close look at Plaintiffs' Exhibit "16" reveals that the equipment listed as security on the D.L. Evans Bank loan in 2000, was the same equipment listed in Plaintiffs' Exhibit "6", which was the document transferring the option to purchase the Montgomery

Farm in 1992. The equipment listed as security in 2000, was never owned by George Kelley, it came with the Montgomery Farm.

Either way, the 2000 refinance should not have had any effect on the trial court's analysis of the "payment of the purchase price" because it happened six years after "the time of the transaction" which was in 1994. And, payment of the purchase price must be analyzed in connection with the facts in existence at the time of the transaction. Therefore, there is really no evidence in the record to substantiate the trial court's statement that Kelley's assets were used as collateral on the loans. The collateral on the loans was the farm and equipment that came with the farm. R. Plaintiff's Exhibit "16".

The *Hettinga* decision is instructive on this issue. In*Hettinga*, the dairy was purchased by the Sybrandys under a "land sale contract" and the purchase price was paid by the Sybrandys over time when they "paid all monthly escrow payments to the escrow holders." *Id.* In *Hettinga*, this Court operated under the assumption that the Sybrandys were the only parties who had "incurred an absolute obligation to pay the purchase price" presumably because the Hettinga's were not obligated on the land sale contract. Even in*Hettinga*, where the purchase price was not delivered up front at the time of closing, and instead was being paid

on a monthly installment basis, this Court still declined to impose a resulting trust where the Hettinga's were reimbursing the monthly installments to the Sybrandys.

Therefore, it was a misapplication of law for the trial court to find that the Kelleys paid the purchase price for the Montgomery farm by entering into a verbal agreement to reimburse the Yadons for the loan payments. In the alternative, Warren Yadon requests that this Court make legal determination that a verbal agreement to repay a loan in some else's name does not rise to the level of "incurring an ***absolute obligation***" to pay the purchase price for the property.

Second, the trial court was clearly erroneous in finding that the Kelleys actually reimbursed all of the semi-annual loan payments, and that there was an intention on the part of the Yadons to hold the Montgomery farm in trust for the Kelleys. The burden of proof was on the Kelleys to demonstrate those facts by clear and convincing evidence. One problem with the Kelleys' position, is that they never demonstrated when or under what circumstances the Montgomery farm would be returned to the Kelleys. In *Hettinga*, this Court held that there was no evidence that "in 1984 the parties agreed to when or under what terms the alleged buy-out would take place;" and that was a reason why the Court did not impose a resulting trust. *See, Hettinga*, 126 Idaho at 470, 886 P.2d at 775. Similarly, in this matter there was a complete lack of evidence from the Kelleys as to "when

or under what terms" the Montgomery farm would be re-conveyed to the Kelleys. There was certainly no evidence that the parties had reached an agreement on this issue at the time of the transaction in 1994.

In fact there was evidence from the Kelley camp that they knew that if Warren and Kim Yadon got divorced the Montgomery farm would remain with the Yadons. For instance, evidence from Kitty Kelley – a clearly biased witness for the Kelleys – suggested that the Kelleys knew in 1994, that the Yadons were going to keep the farm if they divorced. She was testifying regarding the conversation between the Kelleys, Yadons, Kitty Kelley and Todd Phillips that occurred in Todd Phillips' office on the date that the Montgomery farm was signed over to the Yadons:

Q: What did you recall was said about the Montgomery place when you were at Mr. Phillips' office?
A; Well, do you mean when we signed this agreement?
Q: Either when you signed or any other time. I'm just asking what conversations you recalled that were at Mr. Phillips' office?
A: Well, just that we were signing it over and then that Dad would get it back.
Q: Did you sign exhibit 6 in Mr. Phillips' office?
A: Yes, I did. And then I remember a joke after they signed that they joked that if they got a divorce that they would get to keep it.
Q: He being your dad? Who would keep it?
A: That Kim and Warren would assume it.
Q: Wouldn't keep it?
A: Would.

Tr. Vol. 1, pg. 246, ll. 15-25; pg. 247, ll. 1-9. Considering this testimony, at best there was a clear understanding between the Kelleys and the Yadons at the time of the transaction that if Kim and Warren got divorced the Yadons would keep the Montgomery farm. At worst, there is significant confusion as to what the agreement was between the Kelleys and the Yadons at the time of the transaction, and there were never facts presented by the Kelleys regarding when and under what circumstances the farm would be returned to the Kelleys. For the trial court to make a finding that the evidence was clear and convincing that there was an intention on the part of the Yadons to hold the property in trust for the Kelleys is clearly erroneous.

Overall, the facts from *Hettinga v. Sybrandy* bear a striking resemblance to the facts produced at trial in this matter, and in *Hettinga* this Court refused to impose a resulting trust. It was a misapplication of law and a clearly erroneous deviation from precedent for the trial court to find that the facts presented by the Kelleys constituted clear and convincing evidence to establish the elements of resulting trust. If this Court were to affirm the trial court's decision, it would place in jeopardy of loss every landlord's holdings wherein he is leasing the property to a tenant who has agreed to pay an amount equal to the underlying mortgage payment and expenses (such as a triple-net lease). The tenant could at

a whim decide to claim that the landlord is simply holding the property in trust for him, and request an imposition of resulting trust. The requirement to demonstrate payment of the purchase price and/or incurring an absolute obligation to pay the purchase price by a party claiming imposition of a resulting trust provides protection to property owners from improper imposition of resulting trusts. It is imperative that this Court enforce that threshold requirement in this case.

2. **The burden of proof on the Kelleys' claim of resulting trust was improperly placed upon Warren Yadon.**

The burden of proof at trial was upon the Kelleys to prove the elements of resulting trust by evidence that was "clear, satisfactory and convincing." *See, Hettinga*, 126 Idaho at 469, 886 P.2d at 774. The standard for "clear and convincing" proof requires more than a vacuum of evidence to the contrary.

The trial court incorrectly shifted the burden of proof to Warren Yadon when it found "Warren testified that Kelley has not reimbursed the Yadons in full for payments they made, but presented no financial records or persuasive documentation to establish what payments the Yadons had made, the amounts of the payments, and no records were apparently kept to substantiate George Kelley's reimbursement payments to the Yadons." R. Vol. 2, pg. 397. Under the Kelleys own argument, the burden of proof was on the Kelleys to establish that

they had paid the purchase price by reimbursing each and every semi-annual loan payment made by the Yadons. George Kelley testified that he paid all of the loan reimbursement payments to the Yadons, Tr. Vol. 1, pg. 100, l. 13, and Warren Yadon testified that the Kelleys had not fully reimbursed the Yadons for loan payments. R. Vol. 2, pg. 328, ll. 20-25. In the face of that contradictory verbal testimony, the trial court improperly placed the burden upon Warren Yadon to come up with "persuasive documentation" to support his testimony. R. Vol. 2, pg. 397. On the contrary, it was the Kelleys' burden to prove that they made all of the reimbursement payments to the Yadons by "clear and convincing evidence." Therefore, this Court should overturn the trial court's finding of fact on this issue, and enter a finding that the evidence is contradictory at best and that there is not clear and convincing evidence to support the Kelleys' position on their flawed argument that they paid the purchase price by reimbursing the Yadons for the semi-annual loan payments.

Therefore, even if this Court were to accept the trial court's misapplication of law regarding the "payment of the purchase price" and find that the Kelleys' reimbursement of the loan payments to the Yadons constituted payment of the purchase price, there is not clear and convincing evidence in the record to

establish that the Kelleys reimbursed all of the loan payments to the Yadons. Thus, this Court should overturn the trial court's finding.

C. THE TRIAL COURT ERRONEOUSLY DENIED WARREN YADON'S CLAIM FOR EVICTION.

At trial, the court did not get to the issue of eviction. Warren Yadon requests that this Court overturn the trial court's decisions, and enter an order of eviction and quiet title in favor of the Yadons.

Plaintiffs have leased the Montgomery Farm since it was purchased by the Yadons, without a written lease agreement. There was not an agreed upon term for the lease, and therefore, the plaintiffs are year-to-year tenants. The tenancy created by a lessor's election to continue a lease following its expiration is a tenancy at will. *Lewiston Pre-Mix Concrete, Inc. v. Rohde*, 110 Idaho 640, 718 P.2d 551 (1985). "A tenancy or other estate at will, however created, may be terminated: (1) By the landlord's giving notice in writing to the tenant, in the manner prescribed by the code of civil procedure, to remove from the premises within a prescribed period of not less than one (1) month, to be specified in the notice . . .." *See, Idaho Code* § 55-208. "After such notice has been served, and the period specified by such notice has expired, but not before, the landlord may

reenter, or proceed according to law to recover possession." *See, Idaho Code* § 55-209.

In this matter, the Kelleys were personally served with an eviction notice on September 8, 2008. R. Vol. 1, pg. 151. More than thirty (30) days have passed since Kelleys were served with the eviction notice. Therefore, there is no genuine issue as to any material fact on the claim for eviction and this Court should enter judgment on Warren Yadon's claim of eviction.

VII. ATTORNEY FEES

Warren Yadon is entitled to an award of attorney fees and costs as a prevailing party on appeal pursuant to I.C. § 12-121; and I.C. § 6-324.

VIII. CONCLUSION

Warren Yadon respectfully requests that this Court overturn the trial court's decision denying Warren Yadon's motion for summary judgment and enter an appropriate order granting the same. In the alternative, Warren Yadon requests that this Court find as a matter of law that the Kelleys did not incur an "absolute obligation" to pay the purchase price for the Montgomery farm by verbally agreeing to pay the Yadons' loan payments, and as such, have failed to establish the elements of resulting trust. Warren Yadon further requests that this Court enter an order of eviction against the Kelleys. Finally, Warren Yadon requests

that this Court overturn the trial court's award of attorney fees, and enter an award of costs and fees to Warren Yadon.

Dated this 22 day of January, 2010.

SAM L. ANGELL

CERTIFICATE OF SERVICE

I hereby certify that I served two true copies of the foregoing document upon the following this 22 day of January, 2010, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

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